Campaign Finance for Local Filing Authorities

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TEXAS ETHICS COMMISSION

Cities, Schools, and Other Political Subdivisions Webinar

December 15, 2020

Agenda

❖ About the Commission
❖ Local Filing Authority Duties
❖ Campaign Finance Basics
❖ Personal Financial Statements
❖ Political Advertising
Chicken Giant Gives Out $10,000 Checks to Lawmakers

The Associated Press
July 7, 1989, Friday, AM cycle

A millionaire who handed out $10,000 checks on the Senate floor while legislation that interested him was pending said the checks were political contributions, not an attempt to bribe lawmakers.

"It would be difficult to make it into a bribery case," said Travis County District Attorney Ronnie Earle, who believes it's time to change Texas' loose campaign finance laws. "In Texas, it's almost impossible to bribe a public official as long as you report it."

The $10,000 personal checks, with the payee's name left blank, were offered by Lonnie "Bo" Pilgrim, an East Texas chicken processor, to nine of the 31 senators two days before Friday's vote on a House workers' compensation bill.
Texas Ethics Commission

Constitutional state agency created in 1991
- Texas Constitution: Art. III, Sec. 24a
- Ballot proposition passed Nov. 5, 1991
- Offices in Austin
- About 30 employees

8 appointed commissioners
- 4 by governor
- 2 by house speaker
- 2 by lt. gov.

Blank checks for senators ignites probe
Chicago Tribune
July 7, 1989, Friday, NORTH SPORTS FINAL EDITION

An East Texas millionaire is being investigated for giving $10,000 checks to several Texas senators in the Senate chamber two days prior to a crucial vote on worker's compensation legislation.

"We are still researching the law to see if a statute was violated, but passing out blank checks in the chamber of the Texas Senate is outrageous conduct and ought to be against the law," said Travis County District Atty. Ronnie Earle late Thursday. "This is the first time I ever heard of anything like this."
Ethics Commission Duties

- Campaign Finance
- Lobbying
- Personal Financial Disclosures and Conflict of Interest Provisions for **State Officers**
- Interpret Penal Code Chapters 36 and 39
- Set Legislative Per Diem
- Other statutory/constitutional duties

Purpose of Enabling Legislation

- To protect the constitutional privilege of free suffrage by regulating elections and prohibiting undue influence while also protecting the constitutional right of the governed to apply to their government for the redress of grievances. 571.001, Gov’t Code.
How Ethics Laws Work

Require public disclosure
  ◦ Campaign Finance, Lobby, Personal Finance

Campaign finance disclosure deters actual corruption and avoids appearance of corruption (*Buckley v. Valeo*, 1976)

Helps the electorate evaluate candidates
  ◦ Who supports the candidate?
  ◦ How does a candidate spend money?
  ◦ Pol. adv. disclosure

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2013 Sunset Advisory Commission report:
  ◦ Given the few limits state law places on campaign contributions and expenditures, Texas’ approach to ethics relies on disclosure to shine a light on political financial activity for the public to see and judge.
This is where you come in!

What’s My Job?

Your primary responsibility under Title 15, Election Code is to accept documents filed by candidates, officeholders, and political committees, and make available the filed forms for public inspection. Always date-stamp all filings and save postmarks and receipt marks on envelopes.
Who Files With Me?

1. Candidates for and officeholders of elective offices of the political subdivision;
2. Specific-purpose committees supporting or opposing candidates for and officeholders of elective offices of the political subdivision; and
3. Specific-purpose committees supporting or opposing a measure to be submitted at an election ordered by an authority of the political subdivision.*

Who files with me? *Candidates*

- The clerk or secretary of political subdivision for the office the candidate is seeking, or governing body’s presiding member if no clerk or secretary
Who files with me? *Candidates*

- **City Secretary**: Mayor, City Council, City Secretary
- **School Board Secretary**: Trustee
- **County Clerk**: County or Precinct Offices
- **ESD/MUD Secretary/Presiding Officer**: candidates for that office

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Who Files With Me? *Specific-Purpose Committees*

NOTE: A specific-purpose committee that would be required to file with more than one local filing authority may instead file with the Ethics Commission.
Who Files With Me? Exception for School Districts

Specific-purpose committees supporting or opposing a **school bond measure** files the STA with the school district and campaign finance reports with the TEC. **Elec. Code § 254.130(b).**

1) SPAC files STA with school district
2) SPAC files copy of STA filed with school district with TEC
3) SPAC files campaign finance reports with TEC. **1 TAC § 20.7**
   - Includes junior or community college district. **1 TAC § 20.1(23)**

What’s My Job?

You must also copy and **make available all required forms.** Ethics Commission Rules § 18.3. You should also make available the appropriate instruction guide for each required form.

You may not charge a filing fee. **Elec. Code § 251.003.**
Code of Fair Campaign Practices

Inform each candidate or political committee that they may subscribe to the code, but subscription is voluntary.

Elec. Code § 258.003.

Other Resources To Make Available

Document Retention

• **Campaign Treasurer Appointment**: two years after the date it is terminated.

• **Code of Fair Campaign Practices**: same as respective campaign treasurer appointment.

• **Campaign Finance Reports**: *at least* two years after filing.

Termination of Treasurer Appointment

Governing body of political subdivision by ordinance or order may adopt a process by which you may terminate the treasurer of an inactive candidate or committee.

Must adopt rules and follow process outline in section 252.0131, Election Code.
Document Retention

**NOTE:** “If a criminal investigation or proceeding is pending in regard to the election to which title 15 records pertain, you must keep the records until the investigation or proceeding is over.”

Public Access

- Campaign finance reports and campaign treasurer appointments are **public records** and **must be made available** for public inspection during regular business hours.
- Filing authorities may not require a person examining campaign finance reports to provide *any information or identification*. 
Public Access

- Information in campaign finance reports is *expressly public*.
- Generally, do not redact report information (without first contacting AG).


For more information about access to public information, contact the Office of the Attorney General Open Records Division.

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Public Access

*For School Districts with a Student Enrollment of More Than 15,000 and Located Wholly or Partly in a Municipality with a Population of More Than 500,000.*

Within five days of the filing, post on the school district’s website campaign finance reports by:
- school board trustees,
- candidates for school board trustee, and
- specific-purpose committees that support, oppose, or assist a candidate for or member of the board of trustees in a school district.
Public Access

Counties with a population of 800,000 or more must place reports on the Internet.

Municipalities with a population of 500,000 or more must place reports on the Internet.

*Internet access is in addition to, not a replacement for regular inspection during office hours*

**Elec. Code § 254.0401**

What’s Not My Job?

- **DO NOT** fill out forms for filers.
- **DO NOT** edit, or revise forms.
- **DO NOT** misrepresent the date of a filing.
What’s Not My Job?

You are not expected to send notices to filers.

What’s Not My Job?

• You have no responsibility to ensure that required documents are filed.

• You have no authority to enforce Title 15 or penalize a filer.
What’s Not My Job?

You are not expected to be a campaign Finance expert.

What’s Not My Job?

If you receive a question and do not know the answer, direct the requestor to the Ethics Commission’s website (available at https://www.ethics.state.tx.us).

For questions that cannot be answered by the resources on the website, requestors may call the Commission.
Campaign Finance Basics

Campaign Treasurer Appointment (CTA)

➢ All candidates for public office must file a CTA.

➢ Even if candidate does not intend to accept or spend any money (including personal funds spent on campaign)

➢ Candidate must file Form CTA before accepting or spending money.

§§ 252.001, 253.031
EVERY CANDIDATE MUST FILE A CTA

Getting on the ballot and campaign finance reporting are two different tracks.
Specific-Purpose Committees (SPACs)

SPACs must file a campaign treasurer appointment before accepting or spending over $910.

If a candidate has an SPAC, both the candidate and the SPAC must file reports.

Campaign Finance Reports: Regular Filing Schedule

- **Semiannual Reports**
  - Jan. 15 and July 15

- **Pre-election Reports (for Opposed Candidates)**
  - 30-days before an election
  - 8-days before an election
  - 8-days before a runoff
Modified Reporting

- An opposed candidate or SPAC that selects "modified reporting" is not required to file pre-election or runoff reports
- If filer does not intend to exceed $930 in contributions or expenditures in an election
  - Must affirmatively select modified reporting on CTA
  - Separate $930 threshold for each election
- Candidates/SPACs must still file semiannual reports

REPORT AFTER THE ELECTION

Even if a candidate or SPAC selects modified reporting, they will still owe at least one semiannual report/final report after the election.
Candidates/SPACs

Duty to file campaign finance reports continues a “Final Report” is filed (dissolution report for PACs)

Filing a “Final Report” terminates campaign treasurer appointment

Can’t have any further campaign activity after filing a “Final Report.”

Report of Unexpended Contributions required for non-officeholder former-candidates who maintain campaign contributions after filing a Final Report

Deadlines for Candidates/SPACs

Deadline for reports is 5 P.M. on due date

Semiannual reports follow “mailbox rule”

◦ Delivery by mail or other carrier – considered filed by postmark date

Pre-election & runoff reports

◦ Must be received by the due date
Remember

- A CTA can be filed at anytime
- You must provide Title 15 forms at no cost
- Use current forms
- Always OK to direct filers to TEC for campaign finance questions
- All candidates must file a CTA and Campaign Finance Reports

Campaign Finance Restrictions

No anonymous contributions
- If accepted, may donate to recognized tax-exempt charitable organization
- Caution: Bake sales, fishbowls, passing the hat

No commingling funds
No contributions from foreign nationals
No contributions at courthouse
No cash contributions over $100
No raffles (generally considered illegal gambling)
No personal use of contributions
Test Your Knowledge

Assume the following facts:

<table>
<thead>
<tr>
<th>Filer Type:</th>
<th>COH (Candidate/Officeholder) for the May 1, 2021 uniform election</th>
</tr>
</thead>
</table>
| January Semiannual: | Due: January 15, 2021  
Period Covered: 07/01/2020* – 12/31/2020 |
| 30-day report: | Due: April 1, 2021  
Period Covered: 1/1/2021* – 3/22/2021 |
| 8-day report: | Due: April 23, 2021  
Period Covered: 3/23/2021* – 4/21/2021 |
| July Semiannual: | Due: July 15, 2021  
Period Covered: 4/22/2021* - 6/30/2021 |
| First Day to File for a place on the ballot/ Last day | 1/12/2021 and 2/12/2021 |
Nick Carraway decides to run for mayor of West Egg on December 1, 2021. This is the first time he has run for office. He tells his friend Tom Buchanan that he is definitely running for mayor and that he needs his support, financial and otherwise.

Tom said that he already endorsed Myrtle Wilson and Nick walks away disappointed.

Question 1

Is Nick a candidate?
• Yes.
  • He made a statement of definitive intent and a request for support.

What does Nick have to file?
• CTA
Question 1

What is the first campaign finance report that Nick must file?
• January Semiannual

What is the period covered by the January semiannual report?
• December 1, 2020 through December 31, 2020

Question 2

Not to be outdone, Jay Gatsby decides he too will run for mayor. He makes a public announcement on January 14, 2021, that he will run for mayor. He also says he wants to prove that he can win without relying in his fortune or rich “friends.” Therefore, he will not accept any contributions or spend any money on his campaign.
Question 2

Is Gatsby a candidate?
• Yes.
  • He made a public announcement

What does Gatsby have to file?
• CTA
• Option to file modified reporting

Question 3

Gatsby selects modified reporting and stays true to his pledge to spend and accept no money for his election. What is the first campaign finance report that Gatsby must file?

• July semiannual or final report
• Covers from January 14, 2021 through June 30th
• Due: July 15, 2021
Question 4

Right after filing his CTA on January 14, 2020, Gatsby realized people like his parties but don’t actually like him. He decides to throw lavish Elect Gatsby parties every day until election day. He purchases campaign signs for the parties that cost $931 the next day. What reports does he have to file?

• 30-day pre-election report
  • Covers from January 14 through March 22.
• 8-day pre-election report
  • Covers from March 23 through April 21.

Question 4

Anything else?

• Final report or July semiannual report.
Need to update for new threshold.
James Tinley, 12/14/2020

update dates
James Tinley, 12/14/2020
Question 5

Let’s change the facts again. Instead of starting his campaign spending on January 14, 2021, Gatsby waits until April 2, 2021 (the day after the 30-day pre-election report is due) to buy campaign banners, which costs $1,000. What reports does he have to file?

- 48-hour after exceeding $931 limit
  - Due April 4. Covers from January 14 through April 2.
- 8-day pre-election report
  - Covers from April 3 through April 21.

Question 5

Anything else?

- July semiannual or final report
The mayoral election is hotly contested. But the election for city secretary has only one candidate whose name will appear on the ballot, the incumbent Jordan Baker (having given up professional golf a few years ago).

Jordan filed a final report after the last election.

Jordan makes no announcement about running and files for a place on the ballot on January 16, 2021.

Question 6
What does Jordan have to file?
- A CTA at the same time she files her application for a place on the ballot.
Question 7
Jordan timely files her CTA and does not select modified reporting. What campaign finance reports does she owe?
July semiannual or final report by July 15, 2021.

Question 8
Why doesn’t she have to file pre-election reports?
She is unopposed in the election.
RECAP

Unopposed candidates or modified reporting:
◦ Do not need to file 30-day or 8-day reports
◦ Do need to file all semiannual reports until a final report is filed
◦ Remember—if first campaign activity takes place before January 1, 2021—the candidate will owe a CTA and January Semiannual report
RECAP

**Opposed candidates on regular schedule**
- Must file semiannual reports and 30-day and 8-day reports
- Continues to file until final report

**Local Officeholders**
- Do not need to file reports **IF**:
  - they have filed a final report; and
  - do not accept/spend more than $930 on officeholder activities
- Must continue to file as a candidate until they file a final report
Monetary reporting thresholds will be raised based on inflation.

First change effective for expenditures taking place after January 1, 2020

New thresholds go into effect January 1, 2021

Table of the new thresholds codified at TEC Rules §18.31

<table>
<thead>
<tr>
<th>Election Code Section</th>
<th>Threshold Description</th>
<th>Original Threshold Amount</th>
<th>Adjusted Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>254.031(a)(3)</td>
<td>Payee of a political expenditure threshold</td>
<td>$100</td>
<td>$190</td>
</tr>
<tr>
<td>254.031(a)(1)</td>
<td>Contributor information is threshold</td>
<td>$50</td>
<td>$90</td>
</tr>
<tr>
<td>253.031(b)</td>
<td>Contributions/expenditures threshold before a political committee treasurer appointment is required</td>
<td>$500</td>
<td>$910</td>
</tr>
</tbody>
</table>

Changes go into effect January 1, 2021
Who Files Locally?*

ISDs: Board of trustees must file if
- The board adopts resolution to require filing
- Commissioner of Education may also require filing in some circumstances

Education Code § 11.064

Municipal officers and candidates, if population of 100K+
Local Gov’t Code ch. 145

Directors of sports and community venue districts if county pop 3.3 mil+
Local Gov’t Code ch. 335

*TEC does not have jurisdiction over most locally-filed PFSs. Consult County/City Attorney if questions arise.
Personal Financial Statements: cities/counties with a population of 100,000 or greater

- Clerk must deliver/mail/email a copy of the personal financial statement to all officers and candidates at least 10 days before the deadline. LOCAL GOV’T CODE §§ 145.005(b), 159.005(b).

Personal Financial Statements: cities/counties with a population of 100,000 or greater

- Maintain the statements in separate alphabetical files and in a manner that is accessible to the public during regular office hours. During the year after filing, each time a person requests to see the financial statement, place in the file:
  A. a statement of the person's name and address,
  B. whom the person represents, and
  C. the date of the request.

- Retain that statement in the file until the first anniversary of the date the requested financial statement is filed.
Personal Financial Statements: cities/counties with a population of 100,000 or greater

After two years the filer leaves office, you *may* destroy the financial statement, and on request of the filer, *must* destroy the financial statement eligible for destruction.

Local Gov’t Code §§ 145.007, 159.007.

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1. Clerk or secretary must maintain a list of persons required to file a financial statement.

2. Within 10 days of each filing deadline, provide to the municipal/county/district attorney (as applicable) a copy of the list showing:
   A. whether the officer or candidate timely filed a financial statement;
   B. whether the officer or candidate timely requested and was granted an extension of time to file and their new due date; or
   C. whether the officer or candidate did not timely file a financial statement or receive an extension of time.

Local Gov’t Code §§ 145.008, 159.0071.

*See also* Local Government Code ch. 335 (Sports and Community Venue Districts); Educ. Code § 11.064 (school districts).
Summary

1. Accept and date stamp filed documents
2. Do not alter them
3. Copy and make available required forms
4. Retain CTA for two years after termination and campaign finance reports for two years after filing.
5. Make campaign finance reports available to public, without redaction
6. Certain School Districts: Post trustee reports online
7. PFS: Deliver forms; maintain required records; send proper notices

Bonus Content: Political Advertising
Political Advertising

Political advertising must include disclosure statements
- Such as “Political Advertising by Jane Doe”
- Highway right-of-way notice

Cannot misrepresent holding office
Cannot misrepresent identity or true source
See Political Advertising Guide on TEC website
Contact Texas Department of Transportation about signs along highways

Political Advertising

An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising

The prohibition applies to any “officer or employee of a political subdivision” including city
- If a city employee uses city resources in violation of the prohibition, the employee could be fined by TEC or held criminally liable
Political Advertising

Not allowed:

Spending or authorizing the spending of public funds for political advertising
  ◦ Purchasing or authorizing the purchase of materials for use in creating political advertising
  ◦ Using existing resources to create, display, or distribute political advertising
  ◦ Use of paid time of municipal employees to create or distribute political advertising

EAO 45 - Use of school mail system not okay

EAO 443 - Allowing political advertising to be placed in non-public area not okay, even if all candidates or all sides of a measure are allowed to do it

EAO 550 – May not use facilities unless public has equal access

What is allowed:

Public resources for “a communication that factually describes the purposes” of a measure, such as:
  ◦ explanatory material about what is on the ballot
  ◦ purposes of the election
  ◦ election dates
  ◦ polling places

If a political subdivision is unsure, contact TEC beforehand
Political Advertising: Two Extremes and the Area In-Between

“Vote for the Bonds” - Not Okay
“Road Bond Election, May 15” - Okay

Violations often occur because includes a motivational slogan or “call to action” such as:
- Good roads are the foundation of a good community
- Put people first
- Show that you care about your city

Example

City council member’s refrigerator magnet

Ethics Advisory Opinion No. 506 (2012)
What is Political Advertising?

Self-promotion of a public officer

The Commission found that the magnet was political advertising

Public funds could not be used
Example

A county prepared a one page brochure regarding a ballot measure to authorize the creation of a county assistance district and impose a sales and use tax to finance its operations.

Ethics Advisory Opinion No. 531 (2015)

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**NACOGDOCHES COUNTY ASSISTANCE DISTRICT**

Many Texas counties have found it challenging to fund public services, projects and programs. Chapter 387, Local Government Code, authorizes all counties to create county assistance districts and to adopt a local sales tax to finance these public purposes.

A district may impose a sales and use tax to fund the operations of the district if the tax is approved by a majority of votes received at the creation election and if the total combined rate of all local sales and use taxes would not exceed 2 percent at any location within the district. The maximum amount of tax assessed would be 1%. Any money spent in the district would be taxed at 8.25% instead of 7.25%.

The county must hold an election to authorize the creation of the district and imposition of the sales tax.

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**HOW CAN THE TAX REVENUES BE USED?**

The district must use the sales tax revenues to perform the following functions of the district:

- The construction, maintenance, or improvement of roads or highways;
- The provision of law enforcement and detention services;
- The maintenance or improvement of libraries, museums, parks or other recreational facilities;
- The provision of services that benefit the public health or welfare, including the provision of firefighting and fire prevention services; or
- The promotion of economic development and tourism.

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**PROPOSITION**

FOR )
AGAINST )


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**PROPOSITION ELECTION**

**EARLY VOTING**

October 19-23, 8AM-5PM
October 26-30, 8AM-5PM

**ELECTION DAY**

November 3, 2015

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When the Prohibition Does Not Apply

The use of public funds to distribute the brochure was permissible, so long as the brochure did not contain information the employee or officer knew was false.

Questions?

° Read TEC instructions and guides
° Filing schedules and guides online at:
  ° www.ethics.state.tx.us
° Legal or Technical: TEC (512) 463-5800
° Email: james.tinley@ethics.state.tx.us
° @TX_ETHICS